

United States District Court District of Massachusetts

UNITED STATES OF AMERICA,

v.

CRIMINAL NO. 2005-10176-RCL

BRANDON DELGADO,
Defendant.

ORDER OF DETENTION PENDING TRIAL

COLLINGS, U.S.M.J.

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

Part I - Findings of Fact

- ___ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense)(state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
- ___ a crime of violence as defined in 18 U.S. C. §3156(a)(4).
- ___ an offense for which the maximum sentence is life imprisonment or death.
- ___ an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act, the Controlled Substances Import and Export Act, or the Maritime Drug Enforcement Act.
- ___ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses.
- ___ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense.
- ___ (3) A period of not more than five years has elapsed since the (date of conviction)(release of the defendant from imprisonment) for the offense described in finding (1).
- ___ (4) Findings Nos (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonable assure the safety of (an)other person(s) and the

community. I further find that the defendant has not rebutted this presumption.

Alternative Findings (A)

- ____ (1) There is probable cause to believe that the defendant has committed an offense.
 ____ for which a maximum term of imprisonment of ten years or more is prescribed in
 the Controlled Substances Act
 ____ under 18 U.S.C. §924(c).
 ____ (2) The defendant has not rebutted the presumption established by finding 1 that no condition
 or combination of conditions will reasonably assure the safety of the community.

Alternative Findings (B)

- ____ (1) There is a serious risk that the defendant will not appear.
 x (2) There is a serious risk that the defendant will endanger the safety of another
 person or the community if released.

Part II - Written Statement of Reasons for Detention

The defendant is charged with possessing with intent to distribute and distributing cocaine or crack cocaine on five occasions. The Government's evidence in this case is strong; it is highly likely that the defendant will be convicted. The defendant is alleged to have committed these offenses while he was on bail of on \$75,000 (\$7,500 cash deposit) on firearms charges in the Bristol Superior Court. I find that this fact has been proven by clear and convincing evidence, and it forms the basis of my conclusion that if released again, the defendant will commit crimes and be a danger to the community again. While the proposed Third-Party Custodian might be acceptable, she works during the day and the defendant would be on his own for the daylight hours. Even if the defendant is on electronic monitoring, there is a grave risk that he would commit crimes, just as he did while he was on release from the Bristol Superior Court. In short, there are no conditions of release I could set which would give me reasonable assurance that the defendant would be deterred from further criminal activity.

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appear. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

/s/ Robert B. Collings

ROBERT B. COLLINGS
United States Magistrate Judge

Dated: September 12, 2005.